

Meeting of the Licensing Act 2003 Sub-Committee

Held in the Bourges/Viersen Rooms at the Town Hall, Peterborough on 15 May 2023 at
 1:30pm

RECORD OF PROCEEDINGS

| | |
|-----------------------------|---|
| 1. Apologies for Absence | There were no apologies for absence received. |
| 2. Declarations of Interest | None |
| 3. Application | Review of Premises Licence |
| 3.1 Application Reference | MAU: 121276 - Tavan Restaurant – 77 Lincoln Road, Peterborough, PE1 2SH |
| 3.2 Sub-Committee Members | Cllr Wiggin (Chair) Cllr Harper Cllr Warren |
| 3.3 Officers | Darren Dolby, Regulatory Officer Colin Miles, Lawyer – Legal Advisor to the Sub-Committee Dan Kalley, Senior Democratic Services Officer – Clerk to the Sub-Committee |
| 3.4 Applicant | Home Office |
| 3.5 Nature of Application | <p><u>Application Type</u></p> <p><u>Summary of Premises Licence Review Application</u></p> <p>In accordance with the Licensing Act 2003, following the submission of an application for a premises licence review for Tavan Restaurant 77 Lincoln Road, Peterborough, PE1 2SH, the Licensing Authority was required to hold a hearing.</p> <p>summary of the issues raised in the application included:</p> <ul style="list-style-type: none"> On 18 May 2022, The Home Office East of England Immigration, Compliance and Enforcement Team visited Tavan Restaurant where they arrested a male at the premises who had no legal basis to be in the United Kingdom. |

| | |
|---|---|
| | <ul style="list-style-type: none"> • On 23 November 2022 the same team revisited Tavan Restaurant where they found the same male, who had been arrested on the previous visit, on site. The male was found to be working at the premises and was arrested. • Section 11.28 of Guidance (issued under section 182 of the Licensing Act 2003) recommended that revocation of the licence even in the first instance, should be seriously considered where reviews arose and the licensing authority determined, that the crime prevention objective was being undermined through the premises being used to further crimes. |
| 3.6 Licensing Objective(s) under which representations were made | 1. The Prevention of Crime and Disorder |
| 3.7 Parties/Representatives and witnesses present | <p><u>The Licensing Authority</u></p> <p>The Regulatory Officer, who presented the case on behalf of the Licensing Authority.</p> <p><u>Applicant</u></p> <p>Home Office Immigration Service</p> <p><u>Licence Holder and Representative</u></p> <p>Burgas Sea Limited – Mr Chavdar Zhelev Licence Holder’s Representative – Mr Cave</p> <p><u>Responsible Authority</u></p> <p>PC Hawkins</p> |
| 3.8 Pre-hearing considerations and any decisions taken by the Sub-Committee relating to ancillary matters | There were no pre-hearing considerations. |
| 3.9 Oral representations | The Regulatory Officer addressed the Sub-Committee and outlined the main points with regards to the application. The key points raised in their address included a review of a premises licence submitted by the Home Office Immigration Service. Taking all into account the parties have had the chance to review the paperwork. Under Section 182 guidance at point 11.27 it stated that certain activity should be treated particularly seriously, and this included the employment someone who was disqualified from that work by reason of their immigration status in the UK. Under 11.28 of the guidance it stated that it was expected that revocation of the licence – even in the first instance – should be seriously considered. |

Applicant

Mr Jack Davis, Home Office addressed the Sub-Committee. The key points raised during their address, and following questions from the Sub-Committee were as follows:

- On 18 May 2022, the Home Office Immigration Service visited the Tavan restaurant following intelligence that there was an illegal employee working on site. It was not the usual practice to go into premises without receiving genuine intelligence. On that date the team found one male who was arrested as no legal basis to stay in UK, further on 23 November 2022, the same team and found same person working, and a civil penalty was issued due to this.
- At the time of visit in May there was an Egyptian male seen coming out of the kitchen area. It was confirmed that he was not seen working. On the basis that he was not seen working there, no further action was taken.
- During the second visit the same male was found working in the kitchen and working over grill wearing a uniform. The licence holder confirmed that he was working and was being paid £40 for his shift, cash in hand.
- The business owner was spoken to and stated that the male in question was working on a trial basis. On this basis, the Home Office felt that it needed to be brought to the attention of the Licensing Act 2003 Sub-Committee as this was not the first occasion this had happened.
- In every case, the responsible council would determine the best possible action to take. However, the legislation that existed, strongly suggested serious consideration be given to revoking the licence. It needed to be recognised that this was a serious decision, which needed to act as a deterrent to other businesses out there.
- In relation to comments made by other persons, if attention was not being paid to who can work in UK then it was questionable what else was not being paid attention to whilst operating the business.
- The review referral was not a case of double jeopardy. The Sub-Committee had a duty to protect the licensing objectives and how best to enforce these.
- It had been noted that the application could have a negative effect on current employees. However, the applicant felt, that the law had not changed, and therefore, if no action was taken, it would undermine other businesses.
- There were no other immigration issues highlighted during the two Home Office visits to Tavan Restaurant other than the one person identified.
- There was only two other members of staff working on the night of the Home Office visit, however they were not asked any questions.
- The Licence Holder's representative commented that there had been a confirmation sent to the Home Office

in admitting liability and accepted the £15,000 fine which was reduced to £7500 on immediate payment, or £10,000 if it could not be paid within a few days. The £10,000 was accepted and payment plan was set up to deal with this.

- It was illegal for someone on a work trial if they were not entitled to work in the UK, and it was an offence in relation to the immigration act to do so.

Responsible Authority

PC Hawkins addressed the Sub-Committee. The key points raised during their address, and following questions from the Sub-Committee were as follows:

- All points raised by the Home Office in relation to the application had covered the case adequately.
- Members attention was drawn to a recent case in relation to East Lindsay v Abu Hanif (Zara's restaurant and takeaway) that had been referred to the High Court had highlighted that the penalty notice, and the revocation of the licence were considered as separate entities.

Licence Holder and Representative

Mr Cave, who was Mr Zhelev's representative addressed the Sub-Committee. The key points raised during their address, and following questions from the Sub-Committee were as follows:

- There was nothing to dispute in relation to keeping good records, and that the worker was certainly employed and wearing a chef uniform.
- The restaurant had kept a full record of employees and was fully aware of the guidance and checks that needed to be undertaken for entitlement to work in UK.
- The restaurant had been trading in the city for many years and managed by Mr Zhelev for five years with no previous issues.
- The restaurant was a valuable asset to the city which was frequented by a wide range of society. The Tavan also supported pearl hotel and worked hand in hand with the premises. The Owner and Director was in attendance to observe the proceedings as she had an interest in the case.
- Mr Ahmed was known to Mr Zhelev as a customer and was well known for five years as a Turkish chef in the city at many other restaurants. However, he had not worked at the Tavan restaurant until July 2020 when restaurant closed as many others had to during the pandemic period. The landlord of the Tavan restaurant was a keen charity supporter and continued to produce food for the local community. People were not employed to do this work and were volunteers, which Mr Ahmed was one of.

| | |
|--|---|
| | <ul style="list-style-type: none"> • It was felt that some weight could be given to the company's charitable acts and that they stood firm during covid. In addition, the charitable act was supported by many local councillors and the MP who had been pictured standing with Mr Zhelev and his team who produced all the food for the community during Covid 19. • Mr Ahmed was a volunteer and had become involved in the charity work and become a friend rather than a customer. • On 18 May the HO could not confirm if the chef was going to toilet as there was no interpreter at the interview. In addition, the chef was asked if anyone else worked in the restaurant and his response had been no. However, other staff had been working at the premises as it was a trading restaurant. • On the second HO visit to the Tavan, Mr Ahmed was working, and the reason for this was because a chef due on duty had let the restaurant down. Mr Zhelev asked for help with the intention of employment for the chef if the work had gone well. Mr Zhelev admitted to this decision being a mistake, which was done through familiarity and desperation that had cost the business significantly. • When the HO logistics officers attended; they took Mr Ahmed away as they were not satisfied with the required HO identification check. Mr Ahmed was subsequently returned to the restaurant, where he confirmed to Mr Zhelev that he had been taken to the police station, however, the problem had been dealt with. At no point had Mr Ahmed indicated that there was an immigration issue. Mr Zhelev had confirmed that if he had been made aware that there was an illegal issue, then this would have prevented him employing Mr Ahmed straight away. • Mr Zhelev had offered a payment of £40 for the help given by Mr Ahmed with the addition of food to take home, as per the volunteering arrangement through Covid. • Mr Zhelev was fully aware that he had made a huge mistake by not completing the required right to work checks, however, had respected the licensing objectives. • Mr Zhelev had worked in lots of establishments where no one was found to be working illegally. • Mr Zhelev had always carried out the thorough right to work checks required, and this incident was a case of being desperate. • No previous breaches had been found at the Tavan restaurant; no other workers were an issue. • The Tavan restaurant had operated a responsible liquor licence, with no reports of violence or incidents that would be in breach of the licensing objectives. • One mistake had been made by Mr Zhelev and the Tavan restaurant had suffered because of this. |
|--|---|

| | |
|--|--|
| | <ul style="list-style-type: none"> • If the Tavan restaurant lost its alcohol licence, this could have a detrimental impact on other staff members due to loss of employment. • The Pearl Hotel relied on people enjoying themselves at the restaurant. In addition, the Pearl Hotel had become quite successful because of the restaurant, and this was reflected on customer rating websites. • There had been no issues in terms of health and safety of the premises. • The restaurant was an asset and a well-presented part of the community. The landlord had recently redeveloped an area of premises to provide a charitable mental health support call centre for residents that were non-English speaking. The mental health centre, had also been actively supported by the local MP. Mr Zhelev, the business owner, had also agreed to the area being used, even though it would limit his business income. • Mr Zhelev, the business owner had been the Licensee for five years and the Tavan restaurant. In addition, Mr Zhelev held vast experience in a responsible position at Frankie and Bennies restaurant, the Talbot hotel, the Haycock and the Royal Spice restaurant, where there had never been any issues or problems with his conduct. • Mr Zhelev had undertaken a significant amount of charity work and was well respected in the community. • The punishment must be proportionate to the incident and the history of the premises and individual involved and therefore it was hoped that the character of Mr Zhelev, would also be considered when reaching a decision. • Mr Zhelev was also a Treasurer of a catholic school on a volunteer basis and had undertaken his duties without fault. • Mr Zhelev had lived and worked in the city for a long time and been a responsible member of the community. • Changes had already been made by the restaurant because of the breach of the Licensing Act 2003, and further conditions could be imposed to support the crime and disorder objectives if the sub-committee was minded to do so. • The restaurant had implemented a software programme namely Tander, which was an electronic record keeping system for all members of staff where they would be required to clock in and clock out. The system also recorded data in relation to documentation on the right to work in the country. The system could be inspected at any time by any authority and was already running in the hotel. • Mr Zhelev was prepared to write to the licencing officer once a month to inform the department of the name and status of employees employed at the restaurant, however, the Licensing Officer had advised that the suggested action might not be productive. |
|--|--|

| | |
|--|---|
| | <ul style="list-style-type: none"> • It was suggested that the CCTV could be extended into the kitchen area and made available for inspection at any point by responsible authorities. • It was hoped that the licence would not be removed completely, but at its worst, the sub- committee could suspend the licence, which would create a financial penalty, however, the restaurant was currently paying the HO financial penalty. The other alternative would be to impose conditions. • An alternative action could be to replace the Designated Premises Supervisor with the manager of the hotel, who was qualified and could take over those responsibilities for the premises, Mr Zhelev would only remain as the restaurant manager. • Mr Zhelev was very apologetic for the incident and the need for a hearing and requested leniency from the sub-committee not to take the premises licence away. • Mr Zhelev had seen Mr Ahmed working at two previous restaurants for about seven years, which was how they came to know each other. On the first arrest, Mr Zhelev knew that there was an issue with identification and rights to stay in the UK but had not realised that Mr Ahmed could not work in the UK, which was highlighted at the interview in May. • Mr Ahmed had stated that Mr Zhelev was aware of the illegal status, however he refuted that statement. The chef had stated in his interview that no one else was working in premises, however, this was incorrect, and it was apparent that there was no interpreter present and therefore where the confusion has happened. • The first time that Mr Zhelev knew that Mr Ahmed was an illegal worker was on second visit. • Mr Zhelev had kept records and checked all other workers via HO systems. He also confirmed that he could bring workers from outside of UK and had a registered licence for this but had not needed to use it to date. Due to the familiarity of Mr Ahmed and the circumstances of a temporary chef, no documents were requested by him. • Mr Ahmed stated he was Egyptian, the restaurant produced Turkish food. There had also been no information in relation to Mr Ahmed's whereabouts following the incident. • Voluntary work was not paid for, however the first shift that Mr Ahmed had worked was on a trial four-hour basis. • Mr Zhelev fully admitted that no national insurance had been paid and that no right to work was completed. If the trial shift had gone on to fulltime employment, then Mr Zhelev would have realised that Mr Ahmed was not permitted to work in the UK. • It had been accepted by Mr Zhelev, that it was illegal to pay an employee cash in hand. |
| 3.10 Written representations and supplementary | <p><u>Applicant</u></p> <p>Consideration was given to the application for a Premises Licence Review, Cambridgeshire Police information to support</p> |

| | |
|-----------------------------------|--|
| material taken into consideration | the review and other persons representation attached to the Sub-Committee report. |
| 3.11 Facts/Issues in dispute | <p><u>Issue 1</u></p> <p>Whether the premises licence application would further support the 'Prevention of Crime and Disorder' Licensing Objective.</p> |
| 4. Decision | <p>The Sub-Committee listened to all the evidence put before it and also took into account the contents of the application and all representations and submissions made in relation to it. The Sub-Committee found as follows:</p> <p>The Sub-Committee considered the representations made and in writing from:</p> <ul style="list-style-type: none"> • The Home Office Immigration Service • The Police • The Licence Holder representative <p>The Sub-Committee disregarded matters that had not related to the licensing objective in question, and those that fell outside of this Sub Committee's remit.</p> <ul style="list-style-type: none"> • It was the function of the Licensing Sub Committee to take steps with a view to the promotion of the licensing objectives and in this instance, the prevention of illegal working in the interests of the wider community and not those of the individual licence holder. <p>The options that were available to the Sub-Committee included:</p> <ul style="list-style-type: none"> • modify the conditions of the premises licence • exclude a licensable activity from the scope of the licence • remove the designated premises supervisor • suspend the licence for a period not exceeding three months; • revoke the licence <p>The Sub-Committee took a serious view of employing illegal migrant workers, for the reasons stated above. The sub-committee considered revoking the licence; suspending the licence; removing the designated premises supervisor.</p> <p>The Sub-Committee were mindful that they were dealing with one individual on one occasion and had taken into account Mr Zhelev's previous working experience and character.</p> <ul style="list-style-type: none"> • The decision of the Sub-Committee in order to promote the licensing objective in question, that namely the |

| | |
|--|---|
| | <p>prevention of crime and disorder, believed it necessary to:</p> <ul style="list-style-type: none">•• Remove Mr Zhelev as the Designated Premises Supervisor• To add the following condition:<ul style="list-style-type: none">○ CCTV to be installed and operating in the kitchen area whilst the premises are open to the public. Footage to be made available to Home Office Immigration Officers, the Police including Police Community Support Officers and authorised officers from the Licensing Authority. This footage to be kept for three months.• The Designated Premises Supervisor to ensure that any person working at the premises, whether formally employed or not, was lawfully entitled to work in the UK.• The Premises Licence was suspended for two weeks. |
|--|---|

Chairman

Start 1.30pm – End 3.35pm

This page is intentionally left blank